Supreme Court, U.S.
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No. 91-981

In The

Supreme Court of the United States

October Term, 1991

JERRY CODAY, et al.,

Petitioners,

v.

CITY OF SPRINGFIELD, MISSOURI,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a substantial federal question is raised by municipal police detectives who claim that the Springfield, Missouri city charter and state law prohibit the city council from abolishing police detective job titles.

2. Whether the Springfield, Missouri city charter or state law create a constitutionally-protected property interest in police detective job titles.

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CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED

Petitioners complain of General Ordinance No. 3896, enacted by the Springfield, Missouri City Council on February 15, 1988.

Relevant provisions are as follows:

General Ordinance No. 3896:

> *Section 1* – That Section 2-29.1 of the Springfield City Code known as the Salary Ordinance relating to various salary rates and pay grades for various job titles within the City service as contained in the LES schedules is hereby amended by deleting the following job titles:
>
> | Grade | Classification |
> |---|---|
> | LES-6 | Police Detective |
> | LES-7 | Detective (Polygraph Examiner) |
>
> *Section 2* – Police Detective. Any person holding the position of Police Detective on the effective date of this ordinance shall be transferred to the classification of Police Corporal. If a person holding the position of Police Detective on the effective date of this ordinance thereafter holds a position other than that of Police Corporal, then such person's pay shall be the same as that authorized for the other position. In recognition of the many years of experience and seniority in the performance of police detective work the City Council hereby determines that employees who held the position of Police Detective on the effective date of this ordinance shall be granted additional compensation while holding the position of Police Corporal for a

period of four years from the passage of this ordinance. The rate of pay for a person holding the position of Police Detective on the effective date of this ordinance shall remain fixed at the rate established for the position of Police Detective prior to the passage of this ordinance until such time as the City Council adjusts the rate of pay. The City Council states that it intends to grant additional compensation to such employees by authorizing wage increases that it would normally give to other employees in the police department in accordance with the pay policy of the city in effect at that time. At the end of four years from the date of passage of this ordinance the wages of any employee who was a Police Detective on the effective date of this ordinance who continues to hold the position of Police Corporal shall thereafter remain fixed at the rate then established for employees who were grandfathered under this ordinance without benefit of any further wage increases, including cost of living increases, until the rate of pay for the position of Corporal equals or exceeds the rate established for the employee who was grandfathered by this ordinance.

Section 3 – Detective (Polygraph Examiner). Any person holding the position of Detective (Polygraph Examiner) on the effective date of this ordinance shall be transferred to the classification of Police Corporal. If a person holding the position of Detective (Polygraph Examiner) on the effective date of this ordinance thereafter holds a position other than that of Police Corporal, then such person's pay shall be the same as that authorized for the other position. In recognition of the many years of experience and seniority in the performance of police detective

work the City Council hereby determines that employees who held the position of Detective (Polygraph Examiner) on the effective date of this ordinance shall be granted additional compensation while holding the position of Police Corporal for a period of four years from the passage of this ordinance. The rate of pay for a person holding the position of Detective (Polygraph Examiner) on the effective date of this ordinance shall remain fixed at the rate established for the position of Detective (Polygraph Examiner) prior to the passage of this ordinance until such time as the City Council adjusts the rate of pay. The City Council states that it intends to grant additional compensation to such employees by authorizing wage increases that it would normally give to other employees in the police department in accordance with the pay policy of the city in effect at that time. At the end of four years from the date of passage of this ordinance the wages of any employee who was a Detective (Polygraph Examiner) on the effective date of this ordinance who continues to hold the position of Police Corporal shall thereafter remain fixed at the rate then established for employees who were grandfathered under this ordinance without benefit of any further wage increases, including cost of living increases, until the rate of pay for the position of Corporal equals or exceeds the rate established for the employee who was grandfathered by this ordinance.

Section 4 – This ordinance shall be in full force and effect from and after passage.

Passed at meeting: FEB 15, 1988

STATEMENT OF THE CASE

The Petition contains some erroneous statements of fact, including the following:

(1) at p. 5, the statement is made that petitioner Upp is an employee of respondent. Correction: Petitioner Upp retired from the City service while this suit was pending in the courts below.

(2) at p. 5, the statement is made that the Springfield City Charter was adopted in 1978. Correction: The Springfield City Charter was adopted by vote of the citizens of Springfield, Missouri on March 17, 1953, and has been amended from time to time.

(3) at p. 5, the statement is made that "petitioners were . . . reduced in compensation to the lower LES-5 category without having received any written notice of the reductions . . . . " Correction: Petitioners were not reduced in compensation. See Sections 2 and 3 of General Ordinance No. 3896 (erroneously referred to in the Petition as "Council Bill No. 86-16"), providing that petitioners are grandfathered at their existing rates of pay and that they will continue to receive authorized increases in compensation for a period of four years following enactment of the ordinance.

REASONS FOR DENYING THE WRIT

1. Because the controversy in this case is resolved by construing the provisions of the Springfield, Missouri city charter, no substantial federal question is raised, and the case does not present a special or important issue requiring the consideration of this Court.

The nature of this case is such that an opinion rendered by this Court would of necessity be limited in its application to the specific facts involved. The simple question presented is whether the Springfield City Charter (the "Charter") contains a limitation which abridges the power of the Springfield City Council to abolish positions within the classified service of the City. Judicial construction of the Springfield City Charter does not present a substantial federal question under 28 U.S.C. Section 1343. Under the facts presented, there are no special or important reasons for the Court to exercise its discretion to consider this case, as none of the criteria set forth in Supreme Court Rule 10.1 have been met.

A. No substantial federal question is presented.

Petitioners brought this action pursuant to 42 U.S.C. Section 1983 in the U.S. District Court, Western District of Missouri, alleging a violation of their due process rights. Section 1983 does not itself confer jurisdiction on the federal courts; rather, a party must demonstrate the existence of a substantial federal question in order to establish jurisdiction. *Hagans v. Lavine*, 415 U.S. 528, 536-537, 94 S.Ct. 1372, 1378-79, 39 L.Ed.2d 577, 587 (1974).

In *Goldsmith v. Mayor and City Council of Baltimore*, 845 F.2d 61 (4th Cir. 1988), the Fourth Circuit considered a fact situation very similar to this case. Plaintiff Ronny Goldsmith claimed her due process rights were violated when the City of Baltimore enacted an ordinance which abolished the city's Office of Financial Review, of which Goldsmith was the tenured director, and created in its stead the Office of Councilmanic Services, which did not provide civil service tenure. The ordinance grandfathered Goldsmith into the director position of the newly-created Office of Councilmanic Services, *id.* at 63, and "her duties and responsibilities, and her benefits and remuneration did not change," *Id.* at 64.

The Fourth Circuit concluded that the case did not present a substantial federal question because "Approached from any angle, this case merely represents a conflict between a public officer and the city council which created her position. The Supreme Court has ruled time and time again that, under the federal constitution, a legislative body, including municipal councils, has the unfettered authority to create, alter and abolish such positions." *Id.* at 65.

There is no substantive difference between the claims made by petitioners and the claims presented in *Goldsmith, supra.* Petitioners have never disputed that the City Council is empowered by the Charter to create job titles, but contend that the Charter prohibits the City Council from abolishing job titles it has created and the District Court apparently agreed. Appendix to Petition, pp. 17a-18a; p. 22a. The Eighth Circuit rejected this contention, noting that "Indeed, if we followed the rationale of the district court, all city employees in the classified

service would have a constitutionally-protected property interest in their jobs, job titles, job duties, etc., which for the duration of their employment, could not be abolished or altered in any way by the city's legislative body." Appendix to Petition, p. 6a.

B. There are no special or important reasons for granting a writ.

It is significant that under the ordinance complained of, General Ordinance 3896 (erroneously referred to in the Petition as "Council Bill 86-16") petitioners have suffered no interruption of employment, no reduction in compensation and no change in job duties, and therefore have no damages. The lack of damages serves to underscore the point that there are no special or important reasons for granting a writ.

For their first reason for granting the writ, petitioners assert that the decision of the Eighth Circuit "raises important and unique problems in identifying constitutionally-protected property interests," (Petition, p. 11). Respondent suggests there are no "important and unique problems" of constitutional magnitude involved in this case. In order to resolve the case, it is only necessary to apply standard principles of statutory construction under state law to provisions of the Springfield City Charter. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

For their second reason for granting the writ, petitioners assert that "[t]he questions raised in this case are of nationwide importance." Petition, p. 17. Petitioners speculate that the opinion of the Eighth Circuit will "inspire city councils and other local legislative bodies to

save money by reducing the emoluments of public service," Petition, p. 18. Assuming *arguendo* that "the vast majority of these city government employees . . . are covered by some sort of civil service protections," (Petition, p. 17), petitioners do not explain how such abstract information supports their claim that the opinion of the Eighth Circuit signals the beginning of the end of civil service protections for municipal employees. Regardless of how many municipal employees in the United States are entitled to "some sort of civil service protections", whatever that means, the fact remains that the questions raised in this case turn entirely on the construction to be placed on the Springfield City Charter. Each individual municipality across the country is organized according to applicable state law, and there are undoubtedly hundreds if not thousands of individual municipal charters. An opinion by this Court could have little if any precedential value beyond the unique provisions of the Springfield City Charter. Petitioners are asking the Court to grant certiorari based on unfounded speculation, rather than on relevant facts and law.

Petitioners conclude their argument by alluding to election results reported in the Springfield News-Leader on November 6, 1991, Petition, p. 18. This information demonstrates once again the parochial nature of the dispute in this case. Petitioners imply that the defeat of the proposed charter amendment indicates voter approval of their claims in this action; Petition, p. 18. It is safe to assume that if the voters of the City of Springfield believe that petitioners and those similarly situated in the classified service of the City should be entitled to guaranteed,

lifetime tenure in job positions that can never be legislatively altered or abolished, then the voters can initiate such reforms by amending the City Charter to specifically so provide; or the voters can prevail upon the City Council to repeal General Ordinance No. 3896; or petitioners themselves may seek redress through the City Council by asking that General Ordinance No. 3896 be revised or repealed. The remedy for petitioners' grievance is, and should be, through the local political process rather than the courts.

2. The Eighth Circuit correctly determined that the Springfield City Charter and state law do not create a constitutionally-protected property interest in the "Detective" and "Detective-Polygraph Examiner" job titles.

A. The state cases cited by petitioners do not create a property interest.

Petitioners focus their "search for state law" on four Missouri appellate decisions: *Moore v. Damos*, 489 S.W.2d 465 (Mo.App. 1972); *Scism v. Long*, 280 S.W.2d 481 (Mo.App. 1955); *Davis v. Long*, 360 S.W.2d 307 (Mo.App. 1962); and *Heidebur v. Parker*, 505 S.W.2d 440 (Mo.App. 1974). Petitioners' reliance on these cases as a basis for seeking relief in this Court is misplaced for several reasons.

In the first place, none of these four cases were decided by the state court of last resort; namely, the Missouri Supreme Court. Accordingly, it cannot be said that the Eighth Circuit "has decided a federal question in a way in conflict with a state court of last resort,"

Supreme Court Rule 10.1.(a); nor that "a state court of last resort has decided a federal question in a way that conflicts with the decision . . . of a United States court of appeals", Supreme Court Rule 10.1(b). Indeed, in rendering its opinion the Eighth Circuit expressly relied on the analysis of the Missouri Supreme Court in the case of *Sanders v. City of St. Louis*, 303 S.W.2d 925 (Mo. 1957), which specifically dealt with the municipal charter issue here presented. The opinion of the Eighth Circuit is thus in harmony with the declaration of the Missouri Supreme Court on the precise issue involved.

Next, not one of the four cases cited by petitioners involved a claim that a legislative body had deprived a public employee of a protected property interest without due process of law. Even the District Court conceded that the cases cited by petitioners involved only "terminations or reductions in rank for disciplinary reasons". Appendix to Petition, p. 17a.

Furthermore, petitioners completely misconstrue the legal application of the "emoluments" language found in the four cases cited, by taking out of context the phrase " 'a police officer, when he is commissioned, acquires a right or title to the office and its emoluments and such privilege is entitled to protection,' " (Petition, p. 12). Petitioners intone that this singular judicial statement, in and of itself, confers "a property interest on police officers when they are commissioned" in every Missouri city "where officers can only be discharged for cause," Petition, p. 12. Petitioners are mistaken. The property interest discussed in each of the cases cited is not created by judicial declaration; it is created and defined by statutory provisions which give rise to the property interest.

The "emoluments" phrase relied on by petitioners originated in *Scism v. Long, supra,* 280 S.W.2d at 483, a case in which the procedural rights of a St. Louis city police officer in an administrative disciplinary proceeding were at issue. As the opinion clearly states, the city police officer involved held a property interest in his job by virtue of state statutes, Section 84.150 RSMo. (1949) *et seq.*, which provided *inter alia* that City of St. Louis police officers shall be "subject to removal only for cause after a hearing by the board [of Police Commissioners]," *Id.* at 483.

The full context of the phrase upon which petitioners rely is thus seen to be that "It appears from the foregoing statutes that by appointment a police officer acquires a right or title to the office and emoluments which the General Assembly has recognized as a valuable interest or privilege entitled to protection." 280 S.W.2d at 483. Thus, the opinion in *Scism v. Long* did no more than declare the procedural due process rights of St. Louis city police officers in disciplinary proceedings under ch. 84 RSMo. (1949). The case does not stand for the proposition that all Missouri municipal police officers acquire property interests in their jobs merely by the act of being commissioned, as petitioners insist. The source of the property interest was the statute, and not the declaration of the court.

For the same reasons, the remaining cases cited by petitioners do not aid their cause. *Davis v. Long,* 360 S.W.2d 307, *supra,* involved a police lieutenant of the City of St. Louis Police Department who was suspended without pay for misconduct, and subsequently sought reinstatement with reimbursement for loss of pay during the

period of suspension. The court found that the police lieutenant had a property interest in his job and the "emoluments" thereof (pay, in his case) because of state statutes, sections 84.150 and 84.170 RSMo. (1959), *Id.* at 311, 312. The opinion in *Davis* clearly does not stand for the proposition that the police lieutenant had a property interest by virtue of judicial declaration; rather, the court found that plaintiff's property and procedural rights were created by statute, as did the court in *Scism v. Long, supra.*

In *Moore v. Damos,* 489 S.W.2d 465, *supra,* it is clear that the source of the property interest held by the plaintiff police officer in his job was Article VII of the city charter of University City, Missouri, by virtue of which plaintiff was a member of the classified service of the city. "Article VII, Sec. 52(4) of the City Charter of the City of University City, Missouri, requires the Board to hear appeals from disciplinary actions and Sec. 59 of the same Article affords any employee under the 'classified service' who is discharged a public hearing before the Board. Plaintiff is an employee within the 'classified service.' Article VII, Sec. 54(2) of the Charter of the City of University City, Missouri." *Id.* at 468. The reference at p. 468 of the opinion to the "rank, compensation and emoluments" language from *Scism v. Long* is thus placed in context as relating to the procedural rights of the employee in disciplinary proceedings, rather than as a judicial declaration creating the employee's property rights in his job.

In *Heidebur v. Parker,* 505 S.W.2d 440, *supra,* the St. Louis County Board of Police Commissioners found plaintiff Heidebur guilty of misconduct and sustained his dismissal by the Superintendent of Police for St. Louis

County. The issue on appeal concerned which party had the burden of proof in appeals hearings on disciplinary actions before the Board of Police commissioners. The court determined that a Board rule which obligated the appealing employee to proceed first with the evidence denied due process to the employee and was invalid. *Id.* at 444. The source of Heidebur's property interest, and for his right of appeal before the Board, was the St. Louis County Charter (" . . . under provisions of the County Charter, the Board hears appeals on disciplinary actions taken by the Superintendent"; *Id.* at 443). The reference to the "rights and emoluments" language of *Moore v. Damos* found at p. 444 of the opinion clearly relates to the procedural burden of proof issue that was before the court, rather than indicating the source of Heidebur's property interest.

Petitioners' charge that the Eighth Circuit deliberately ignored "authoritative state court rulings that define the protected contours of a property interest," Petition, pp. 12-13, is unsupported. Petitioners have obviously misread the very cases they claim the Eighth Circuit has ignored, besides which, petitioners cannot possibly know that the Court in fact "ignored" the cases. Furthermore, petitioners fail to acknowledge that the Eighth Circuit did in fact rely on the singular authoritative ruling by the highest state court that was applicable on the facts of this case, that being the opinion of the Missouri Supreme Court in *Sanders v. City of St. Louis, supra.*

B. The Springfield City Charter does not abridge the power of the City Council to alter and abolish positions within the classified service.

The conclusion reached by the Eighth Circuit was "that no constitutionally protected property interest existed in the employee's positions as detectives." Appendix to Petition, p. 5a. In analyzing the Springfield City Charter, the Court noted the broad grant of legislative authority to the City Council in Sections 1.2 and 1.3 of the Charter, and the express powers granted the City Council "over the organization and operations of the police department" in Section 4.4 of the Charter. Appendix to Petition, pp. 5a-6a. The Court also called attention to Section 19.7 of the Charter, which "expressly provides the city council with the power to establish the maximum and minimum salaries for employees in the classified service of the city," Appendix to Petition, p. 6a.

The Court found that "Sections 6.10 and 6.11 – which are contained within Article VI of the charter, labeled 'Department of Personnel' – apply only to administrative actions, such as promotion or discipline of employees. They do not limit or preclude the city council's legislative authority to make necessary policy and budget decisions; they do not somehow override the express authority for the city council's actions in sections 4.4 and 19.7; and, thus, they do not create a constitutionally-protected property interest that prohibits the city council from passing the ordinance at issue in this case." Appendix to Petition, pp. 6a-7a. The Court found support for its charter analysis in *Sanders v. City of St. Louis, supra,* in which the Missouri Supreme Court considered a similar municipal

charter construction issue, and reached essentially the same conclusions.

Petitioners' "Charter misinterpretation" and "legislative-administrative distinction" arguments (Petition, pp. 13-16), do not detract from the analysis of the Eighth Circuit. The sum and substance of petitioners' argument appears to be that they and the District Court have read the City Charter correctly, and the Eighth Circuit has not. The suggestion is made that Sections 6.10 and 6.11 of the City Charter "fit neatly into the Missouri decisional law respecting a police officer's 'right or title' to the office, including the 'emoluments' of ranks and compensation attached thereto," Petition, p. 14. However, as discussed *supra*, the Missouri decisional law on which petitioners purport to rely does not support their position in any event, as it is clear petitioners have misconstrued those cases.

It is significant that nowhere in their argument do petitioners address or attempt to distinguish the controlling case of *Sanders v. City of St. Louis, supra*. *Sanders* is the authoritative ruling by the highest state court on the state law question of the distinction that exists between administrative disciplinary actions on the one hand, and legislative determinations of municipal policy and budget decisions under a municipal home rule charter on the other hand. *Sanders* perfectly supports the conclusions reached and the judgment entered by the Eighth Circuit.

CONCLUSION

For the foregoing reasons, this case does not present questions which require or merit the consideration of this Court, and the Petition For a Writ of Certiorari to review the judgment and opinion of the Eighth Circuit should be denied.

Respectfully submitted,

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